

**From:** Steve Schneider  
**To:** Denise Dragoo; John Kirkham; Todd Bingham  
**Date:** 9/1/2009 10:09 AM  
**Subject:** OSM Final Rule 9/1/2009: UMA Rules Request

**CC:** Dana Dean; Daron Haddock; Doug Johnson; John Baza  
Todd B., Denise D., John K.,

After an extended evaluation period of one year within the federal Solicitor's Office, the Final Rule was published today in the Federal Register pertaining to the three Utah coal rule topics which the UMA and DOGM pursued with the Board of OG&M. Therefore, the Office of Surface Mining has now approved the state rule changes on the topics of sealing of wells, catchall statements, and intermittent stream, as no less effective than the federal requirements.

To refresh our memory and to bring Mr. Bingham up to speed, the original request for rulemaking from the UMA was on November 26, 2006. The informal rulemaking phase with various stakeholders encompassed most of 2007. The BOGM formally approved the state rule changes on March 26, 2008 and the rules were published in the State Bulletin as final on April 15, 2008. DOGM submitted a formal program amendment to OSM on May 28, 2008 and OSM published the proposed rules on June 24, 2008 for public comment. OSM published the final rule on Sept. 1, 2009.

Here is the link to the Federal Register, 74 FR 45116:

<http://frwebgate1.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=819407140801+1+2+0&WAISSaction=retrieve>

Thanks to everyone for their participation along the way.

Steve Schneider  
Admin. Coordinator  
Utah Div. Oil, Gas & Mining  
801-538-5328



Consultants within three years of plan approval.

(k) Illinois and OSHA will develop a plan for joining the OSHA Integrated Management Information System to report State plan activity, including specific information on inspections, consultation visits, etc., in conjunction with OSHA, within six months of plan approval. Illinois will convert to the new OSHA Information System upon its deployment. In the interim, Illinois will provide monthly reports on its activity in an agreed upon format.

(l) Illinois will coordinate with the Illinois Department of Public Health and the Bureau of Labor Statistics to expand the current Illinois survey to provide more detailed injury/illness/fatality rates on State and local government, within two years of plan approval.

(m) Illinois will revise and submit a State poster for posting at all public sector workplaces in the State within one year of plan approval.

§ 1956.82 [Reserved]

§ 1956.83 [Reserved]

**§ 1956.84 Location of plan for inspection and copying.**

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N-3700, Washington, DC 20210; OSHA's Regional Office in Chicago, Illinois, at 230 South Dearborn Street, 32nd Floor, Room 3244, Chicago, IL 60604; and at: the Offices of the Illinois Department of Labor, Safety Inspection and Education Division at 1 West Old State Capitol Plaza, 3rd floor, Springfield, IL 62701; 160 North LaSalle Street, Suite C-1300, Chicago, IL 60601; or 2309 West Main Street, Suite 115, Marion, IL 62959.

[FR Doc. E9-21044 Filed 8-31-09; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 944**

[SATS No. UT-045-FOR; Docket ID No. OSM-2008-0011]

**Utah Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the Utah regulatory program (the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Utah proposed revisions to and additions of rules about the sealing of wells and boreholes, Division of Oil, Gas and Mining ("Division" or "DOGM") responsibilities when requesting additional information during permit reviews, and the definition of intermittent stream. Utah is revising its program to be consistent with the corresponding Federal regulations, to achieve greater scientific accuracy, and to improve operational efficiency.

**DATES:** *Effective Date:* September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:**

James F. Fulton, Chief, Denver Field Division, (303) 293-5015, [jfulton@OSMRE.gov](mailto:jfulton@OSMRE.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Utah Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

**I. Background on the Utah Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, *Federal Register* (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

**II. Submission of the Proposed Amendment**

By letter dated May 28, 2008 Utah sent us an amendment to its program (Document ID No. OSM-2008-0011-0001) under SMCRA (30 U.S.C. 1201 *et*

*seq.*). Utah sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the June 24, 2008, *Federal Register* (73 FR 35607). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Document ID No. OSM-2008-0011-0001). We did not hold a public hearing or meeting because no one requested one. We received comments from two industry groups and one Federal agency.

**III. OSM's Findings**

The following are our findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

**A. The Casing and Sealing of Underground Openings**

Utah is amending R645-301-551 to read:

Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, drill hole, or other opening to the surface from underground will be capped, sealed and backfilled, or otherwise properly managed, as required by the Division and consistent with MSHA, 30 CFR 75.1711 and all other applicable state and federal regulations as soon as practical. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters. With respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649-3-24 will satisfy these requirements.

This amendment adds "drill holes" to the list of underground openings specified in R645-301-551. The amendment also adds a requirement that the casing and sealing of underground openings be consistent with "all other applicable State and Federal regulations as soon as practical." Finally, the amendment adds the following sentence to the end of the regulatory provision: "With respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649-3-24 will satisfy these requirements."

"Drill hole" is defined by the Dictionary of Mining, Minerals, and Related Terms (2nd ed. 1997.) as "a hole in rock or coal made with an auger or a drill". Drill holes, unlike other types of openings to underground mines, such



as shafts, adits, tunnels, slope, and drift openings are not large holes that provide access to the mine workings for personnel or for the purpose of coal removal. Drill holes tend to be smaller than other types of openings and can serve multiple purposes, including but not limited to, ventilation, water quality monitoring wells, and coal exploration. Drill holes were already governed by R645-301-551 prior to this amendment, as the provision encompasses not just the underground openings specifically listed in the regulation, but all openings to the surface from underground. The addition of the term "drill hole" to the first sentence of the provision thus merely adds a specific reference to one particular type of underground opening encompassed by the regulation.

The proposed addition of the requirement that the capping, sealing, backfilling, or other proper management of underground openings be done in a manner "consistent with \* \* \* all other applicable State and Federal regulations as soon as practical" modifies the regulation in two ways. First, the amendment acknowledges that other State or Federal laws may apply to the casing and sealing of underground openings and, second, it requires expeditious reclamation of underground openings once they are no longer needed for monitoring or other use approved by the Division.

Utah's proposed addition of a new sentence providing that "[w]ith respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649-3-24 will satisfy these requirements" has the effect of specifying two alternate methods by which an operator can comply with the casing and sealing requirements for drill holes, unless otherwise approved by DOGM.

SMCRA requires, among other things, that underground coal mining permits require an operator to seal all portals, entryways, drifts, shafts, or other openings between surface and underground mine workings when no longer needed for the conduct of mining operations and to fill or seal exploratory holes no longer needed for the conduct of mining operations. 30 U.S.C. 1266(b)(2) and (3). Both Federal and State regulations require, among other things, that openings to the surface from underground no longer needed for uses approved by the regulatory authority be capped, sealed, backfilled or otherwise properly managed as required by the regulatory authority and consistent with 30 CFR 75.1711. Federal and State regulations also require that permanent closure measures be designed to prevent

access to the mine workings by people, livestock, fish and wildlife, and machinery and to prevent acid or toxic drainage from entering ground or surface water. Finally, all capping, sealing and backfilling or other proper management of underground openings must be consistent with Mine Safety and Health Administration (MSHA) regulations at 30 CFR 75.1711. See 30 CFR 816.13/817.13 and 816.15/817.15 and Utah R645-301-551.

30 CFR 75.1711 requires that openings of coal mines declared inactive by the operator, permanently closed, or abandoned for more than 90 days be sealed by the operator in a manner prescribed by the Secretary of Labor. 30 CFR 75.1711 also requires that openings of all other mines be adequately protected to prevent entrance by unauthorized persons in a manner prescribed by the Secretary of Labor. 75 CFR 75.1711-3 includes fencing and signage requirements prohibiting the entrance of unauthorized persons into the openings of all mines not declared by the operator to be inactive, permanently closed, or abandoned for less than 90 days. Utah's proposed modifications to R645-301-551 do not cause any inconsistency of the Utah provision with the MSHA requirements at 75 CFR 75.1711 and 75.1711-3.

The MSHA regulations at 30 C.F.R. 75.1711-1 and 75.1711-2 deal specifically with the sealing of shaft (75.1711-1) and slope or drift (75.1711-2) openings. Drill holes are relatively small diameter openings made with drills rather than shaft, slope or drift openings which are larger diameter holes made with larger equipment. The Division's requirements for sealing drill holes do not conflict with the requirements of 30 CFR 75.1711-1 and 75.1711-2. Therefore, this change does not raise any issue of inconsistency.

Under Utah's proposed modifications to R645-301-551, unless otherwise approved by DOGM, an operator's compliance with one of two alternate regulatory provisions (43 CFR 3484.1(a)(3) or R649-3-24) will be deemed to satisfy casing and sealing requirements for drill holes. As the regulatory authority, the Division has the authority to approve alternative means of accomplishing the casing and sealing of underground openings so long as Utah's program remains no less effective than the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15 in meeting the requirements of SMCRA.

The first regulation cited by Utah, 43 CFR 3484.1(a)(3), is a Bureau of Land Management (BLM) regulation

pertaining to coal exploration and mining activities. The BLM regulation requires that exploration drill holes be capped with at least 5 feet of cement and filled with a permanent plugging material that is unaffected by water and hydrocarbon gases and will prevent the migration of gases and water in the drill hole under normal hole pressures. Additional plugging requirements apply under the BLM regulation for exploration holes drilled deeper than stripping limits, i.e., deeper than the material to be removed during the mining process. 30 CFR 4384.1(a)(3) allows a BLM authorized officer to approve a lesser cap or plug. Finally, the BLM regulation provides that exploration activities shall be managed to prevent water pollution and mixing of ground and surface waters and to ensure the safety of people, livestock, and wildlife.

The BLM regulation, like the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15, serves to prevent the migration of water and hydrocarbon gases between strata, prevent water pollution, minimize disturbance to the hydrologic balance, and ensure the safety of people, livestock and wildlife. OSM finds that the Division's proposal to allow an operator's compliance with 43 CFR 3484.1(a)(3) to satisfy the casing and sealing requirements of R645-301-551 as applicable to drill holes is no less effective than the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15 in meeting the requirements of SMCRA.

Utah's proposal would also deem an operator's compliance with the performance standards of another Utah regulation, R649-3-24, to constitute compliance with R645-301-551, as applicable to drill holes. The R649 rules were written to apply to oil and gas mining and generally would not apply to coal mining. Utah clarified its intention that the pertinent provisions are the performance standards found in subsection (3) & (4) (see Administrative Record # OSM-2008-0011-0007). R649-3-24(3) requires that a dry or abandoned well be plugged so that oil, gas, water, or other substances will not migrate through the well bore from one formation to another. R649-3-24(3.1) through (3.8) specify methods and procedures for plugging a well, require cement as the primary plugging material, and allow intervals between plugs to be filled with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore. R649-3-24(3.4) requires the surface of the opening to be completely plugged with cement. The requirements of R649-3-24(3) through



(3.8), like the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15, serve to prevent the migration of gases and fluids between strata, minimize damage to the hydrologic balance, and prevent access to the mine workings, and thereby eliminate safety hazards posed by underground openings.

We find all changes to R645-301-551 to be no less effective than the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15 in meeting the requirements of SMCRA and approve them.

Utah is also amending R645-301-631, R645-301-631.200, and R645-301-765 to add a reference to R645-301-551 (proposed for revision above). These provisions deal with the casing and sealing of exploration holes, boreholes, and wells. Exploration holes, boreholes, and wells are all holes made with drills, or "drill holes." R645-301-551 has been revised to deal specifically with drill holes. As such, this is the appropriate reference for performance standards regarding the casing and sealing of drill holes. Because R645-301-551 is no less effective than its Federal counterpart, we find these cross-references to R645-301-551 to be no less effective than Federal requirements and approve them.

#### *B. Requests for Additional Information*

Utah is adding subsection R645-300-131.300 which reads:

R645-300-130 Review of Permit Application. \* \* \* 131.300. If, after review of the application for a permit, permit change, or permit renewal, additional information is required, the Division will issue a written finding providing justification as to why the additional information is necessary to satisfy the requirements of the R645 Rules and issue a written decision requiring the submission of the information.

In the event that additional information is required in a permit application review, the Division must now issue a written decision that the information is necessary and legal justification as to why. This will create a written record of the request and provide specific legal guidance to the applicant. Applicants will then clearly understand which regulation's requirements have not been satisfactorily met. Because this is a written decision the applicant, permittee, or any person with an interest which is or may be adversely affected may appeal the decision (see R645-300-211).

A permit applicant has the burden of establishing that their application is complete. However, when the Division is reviewing an application and finds that additional information is necessary

to complete that review, the information must be requested from the applicant.

When the Division needs more information to complete a permit application review it is because the applicant has not submitted sufficient supporting documentation to make the necessary findings for the type of permitting action being requested. The Division will know what the application is lacking and what provision(s) requires the information by conducting its standard review. The Division will cite the unsatisfied regulation to ensure that the applicant understands exactly what is being requested and why.

This addition does not have a Federal counterpart. Under the Federal program requests for additional information would be made through comment letters. Federal comment letters do not carry the right of appeal. However, if the applicant does not respond by submitting the necessary information, OSM must then issue a decision denying the application based on the deficiency of information. This decision would have the right of appeal. DOGM's addition will allow appeals earlier in the permit review process.

The existing provision continues to be no less effective than Federal requirements under SMCRA. The addition proposed here would be no less effective than Federal regulations and we approve it.

#### *C. Intermittent Streams*

Utah proposes to revise R645-100-200 to read:

"Intermittent Stream" means a stream, or reach of stream, that is below the local water table for at least some part of the year and obtains its flow from both surface runoff and groundwater discharge.

The Federal definition of "intermittent stream" at 30 CFR 701.5 includes two parts, (a) and (b). Under this definition "intermittent stream" means: (a) A stream or reach of a stream that drains a watershed of at least one square mile, or (b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Utah's definition of "intermittent stream" formerly included parts (a) and (b) similar to the Federal definition. Utah proposed to eliminate part (a) which incorporated into the definition of intermittent stream any stream or reach of stream that drains a watershed of at least one square mile. The change is intended to adopt a more hydrologically accurate definition of intermittent streams as well as to clarify the distinction between intermittent and

ephemeral streams. Ephemeral streams continue to be defined as "a stream which flows only in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table." This amendment separates the terms completely, with the basic distinction being that intermittent streams receive some groundwater contributions and ephemeral streams do not.

The Federal definition with two parts includes ephemeral streams that drain a watershed of at least one square mile within the definition of intermittent stream. By itself, Utah's proposed change to the definition of intermittent stream is deficient because it does not include all the streams that would be covered by the Federal definition. To remedy the deficiency, Utah proposed to add specific language to all regulations involving intermittent streams to include ephemeral streams that drain a watershed of at least one square mile (additional changes approved below).

As a result of all proposed changes, all coal mining and reclamation activities affecting any stream or drainage channel will be subject to the same requirements as before this definition change. Taking into account all proposed changes, we find this definition change to be no less effective than Federal regulations and we approve it.

Utah is adding language to the following rules: R645-301-535.210, R645-301-535.223, R645-301-731.610, R645-301-742.320, and R645-301-742.321, R645-301-742.323, R645-301-742.324, R645-301-742.331, and R645-301-742.412. These additions rectify the potential problem created by the change in definition of "intermittent stream." By adding "or ephemeral streams that drain a watershed of at least one square mile," the Division reinstates channels that drain a watershed of at least one square mile and flow only in response to surface runoff to the regulations where the above definition change would have excluded them.

All provisions pertaining to intermittent streams in the Utah Administrative Rules are being revised here. Because these additions only reinstate drainages which would have been excluded through the definition change, these are nonsubstantive changes. With the definition change, these additions ensure that the Utah Administrative Rules are inclusive of all watercourses defined as intermittent streams under Federal Regulations at 30 CFR 701.5. We approve these changes.



#### IV. Summary and Disposition of Comments

##### Public Comments

We asked for public comments on the amendment (Document ID No. OSM-2008-0011-0001). We received comments from one Federal agency and two industry groups.

##### Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Utah program (Document ID No. OSM-2008-0011-0003).

We received a comment from the Bureau of Land Management on July 3, 2008 (Document ID No. OSM-2008-0011-0005.1). This comment points out a citation error in the Code of Federal Regulations at 30 CFR 817.15. The citation is of "30 CFR 75.1771", which does not exist. The correct citation should be "30 CFR 75.1711". OSM acknowledges this error and will address it in a future rulemaking action.

##### State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 2, 2008, we requested comments on Utah's amendment (Document ID No. OSM-2008-0011-0003), but neither responded to our request.

##### Industry Group Comments

We received a comment from the Utah Mining Association (UMA) on August 5, 2008 (Document ID No. OSM-2008-0011-0006.1). The UMA supports this amendment and recommends adoption of the new definition of "intermittent stream". They state that it will provide clarification between "intermittent" and "ephemeral" and will provide more hydrologically accurate definitions of these terms. We agree and are approving these changes.

We received a comment from the Law Office of Snell & Wilmer on behalf of UtahAmerican Energy, Inc (UEI) on July 25, 2008 (Document ID No. OSM-2008-0011-0004.1). This comment indicates that UEI supports the "intermittent stream" definition change and recommends that OSM approve it. They state that this change clarifies the distinction between the terms "ephemeral" and "intermittent" and will help DOGM determine baseline hydrologic data and monitoring

requirements. We agree and are approving these changes.

##### V. OSM's Decision

Based on the above findings, we approve Utah's May 28, 2008 amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 944, which codify decisions concerning the Utah program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

##### VI. Procedural Determinations

###### Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

###### Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

###### Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

###### Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the

regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

###### Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

###### Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

###### National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

###### Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

#### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

#### Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for

which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

#### List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 2009.

James F. Fulton,

Acting Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 944 is amended as set forth below:

#### PART 944—UTAH

■ 1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 944.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

#### § 944.15 Approval of Utah regulatory program amendments

\* \* \* \* \*

Original amendment  
submission date

Date of final publication

Citation/description

Original amendment submission date	Date of final publication	Citation/description
May 28, 2008	September 1, 2009	Utah Admin. R.645-100-200 definition of intermittent stream; 645-301-131.300; 645-301-535.210; 645-301-535.223; 645-301-551; 645-301-631; 645-301-631.200; 645-301-731.610, 645-301-742.320; 645-301-742.321; 645-301-742.323, 645-301-742.324, 645-301-742.331, 645-301-742.412; 645-301-765.

[FR Doc. E9-21053 Filed 8-31-09; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[USCG-2009-0561]

RIN 1625-AA00

#### Safety Zone; Lower Mississippi River, USACE Revetment, Mile Marker 869 to 303

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone on the Lower Mississippi River from mile marker 869.0 to 303.0, extending the entire width of the river, 0.5 mile downriver and 0.5 mile upriver

from the 2009 US Army Corps of Engineers (USACE) revetment work throughout the Lower Mississippi River. This moving safety zone is needed to protect persons and vessels from the potential safety hazards created by the 2009 USACE revetment project. Entry into this zone is prohibited to all vessels and mariners unless authorized by the Captain of the Port (COTP) Lower Mississippi River or a designated representative.

**DATES:** This rule is effective from September 1, 2009, at 6 a.m. until 6 p.m. to November 1, 2009. The safety zone has been enforced with actual notice since July 4, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0561 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0561 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at two locations: the Docket

Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and Sector Lower Mississippi River, 2 Auction Avenue, Memphis, Tennessee 38105 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Chief Warrant Officer Ray Bartlett, Sector Lower Mississippi River Waterways Management Branch, at (866) 777-2784, e-mail: [Raymond.J.Bartlett@USCG.MIL](mailto:Raymond.J.Bartlett@USCG.MIL). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, at (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior